

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
ALLTEL Communications, Inc.)	DA 03-3876
)	
Petition for Consent to Redefine the Service)	
Areas of Rural Telephone Companies)	
In the State of Wisconsin)	

**REPLY COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in response to the proceeding on the ALLTEL Communications, Inc. petition requesting FCC concurrence with the Wisconsin Public Service Commission's (Wisconsin PSC) proposal to redefine the service areas of certain Wisconsin rural telephone companies.¹ OPASTCO is a national trade association representing more than 550 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All of OPASTCO's members are rural telephone companies as

¹*The Wireline Competition Bureau Seeks Comment on ALLTEL's Petition to Redefine Rural Telephone Company Service Areas in the State of Wisconsin*, CC Docket No. 96-45, Public Notice, DA 03-3876 (rel. Dec. 4, 2003).

defined in 47 U.S.C. §153(37). In addition, they are all eligible telecommunications carriers (ETCs) in their respective service areas.

OPASTCO agrees with commenters who have urged the Commission to stay consideration of ALLTEL's petition pending the resolution of the proceeding that is considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating ETCs. However, if the Commission deems it necessary to address the issues contained within the petition prior to the resolution of this related proceeding, then it should reject the Wisconsin PSC's proposal to fragment the fourteen rural ILEC study areas, since the petition fails to provide a compelling rationale for such an action.

II. COMMENTS

On February 7, 2003, the Federal-State Joint Board on Universal Service (Joint Board) issued a Public Notice which sought comment on numerous competitive universal service issues.² These issues include the methodology for calculating support in competitive study areas, the process for designating additional ETCs, and the factors that should be considered "when determining whether the designation of a competitive ETC below the study area level is in the public interest."³ Comments and reply comments have been filed in this proceeding, and the Joint Board conducted a hearing on these issues on July 31, 2003. It is quite possible that, as a result of this proceeding, there will be significant changes in the way in which competitive ETCs are designated, and in the level of support that they receive.

² *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, Public Notice, 18 FCC Rcd 1941 (2003) (Joint Board Portability Public Notice).

³ Joint Board Portability Public Notice, 18 FCC Rcd 1956-1957, para. 35.

Commenters in this proceeding have recommended that until the issues being considered in the Joint Board Portability Public Notice are resolved, the Commission should stay consideration of the proposed service area redefinition addressed in ALLTEL's petition.⁴ While key policies related to ETC designations are currently under review, it remains unclear how the Commission should evaluate whether or not the Wisconsin PSC's proposed redefinition of multiple rural telephone company service areas would serve the public interest. Thus, a stay on the review of ALLTEL's petition is the most reasonable approach for the FCC to take at this time.

However, if the Commission deems it necessary to address the Wisconsin PSC's redefinition proposal prior to the resolution of the portability proceeding, then it should reject the proposal to fragment the fourteen rural telephone company study areas, since the petition fails to provide a compelling rationale for such an action. Service area redefinitions are not a required component of the Wisconsin PSC's designation of ALLTEL as an ETC, as claimed in the petition.⁵ Moreover, the redefinition of the fourteen rural service areas so as to facilitate financially supported competition distorts the intended purposes of the High-Cost universal service program.

In its petition, ALLTEL claims that it is unable to provide its universal service offerings throughout the entire service areas of the rural telephone companies addressed

⁴ CenturyTel, Inc. Comments, pp. 8-9; Wisconsin State Telecommunications Association-ILEC Division (WSTA) Comments, pp. 2-4. Similar recommendations have been made in relation to the Commission's consideration of service area redefinitions for twelve rural telephone companies in Minnesota. *See*, CenturyTel, Inc. Comments in CC Docket No. 96-45 (filed Aug. 26, 2003), pp. 7-8; Citizens Telecommunications Company of Minnesota, Inc. and Frontier Communications of Minnesota, Inc. Comments in CC Docket No. 96-45 (filed Aug. 26, 2003), pp. 1-2, 6; Minnesota Independent Coalition Comments in CC Docket No. 96-45 (filed Aug. 26, 2003), pp. 10-11; OPASTCO Reply Comments in CC Docket No. 96-45 (filed Sept. 9, 2003), p. 3; United States Telecom Association Comments in CC Docket No. 96-45 (filed Aug. 26, 2003), pp. 3-4.

⁵ *Petition of ALLTEL Communications, Inc. for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Wisconsin*, CC Docket No. 96-56, p. 2 (filed Nov. 21, 2003) (ALLTEL Petition).

by the petition.⁶ As a result, the petition requests FCC concurrence with the Wisconsin PSC's proposal to redefine these service areas in a manner that conforms to the licensed service area of ALLTEL, so that the provisions of Section 214(e) of the Telecommunications Act of 1996 (the 1996 Act, the Act) would be met.⁷ This would require service area definitions at the wire center level.⁸

However, such an action is unnecessary since ALLTEL has the ability to provide service both inside and outside of its licensed service area, should it so choose.⁹

Commenters correctly indicate that ALLTEL can serve the entirety of the fourteen rural telephone company study areas – including those portions that extend beyond its licensed territory – through a combination of its own facilities, roaming agreements, and resale of other carriers' services, as permitted in Section 214(e)(1)(A) of the 1996 Act.¹⁰

Moreover, the FCC has previously noted that a wireless ETC could “supplement its facilities-based service with services provided via resale”¹¹ so as to extend service to those portions of a rural telephone company's study area not within the wireless carrier's license area.

Thus, it is clear that ALLTEL is not incapable of serving the segments of the fourteen rural study areas that fall outside of the area for which it has a wireless spectrum license. Rather, ALLTEL has simply made a business decision to deny service to these

⁶ ALLTEL Petition, p. 9

⁷ *Ibid.*, p. 3. Section 214(e)(1)(A) requires that in order for a carrier to be designated as an ETC, it must be able to offer all of the services supported by federal universal service support throughout the service area for which such designation is received.

⁸ *Id.*, pp. 5-6.

⁹ *See*, CenturyTel Comments, p. 5; WSTA Comments, p. 3.

¹⁰ CenturyTel Comments, pp. 5-6; WSTA Comments, pp. 6-7.

¹¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8881-8882, para. 189 (1997).

areas.¹² It is entirely at odds with the principles of universal service to allow a competitive ETC to exercise a preference to ignore portions of a rural telephone company's study area that it deems unattractive or inconvenient to serve.

CenturyTel correctly notes that acceptance of the proposed redefinition would give ALLTEL a "strong incentive to serve only the lowest cost wire centers and to ignore the relatively high-cost wire centers."¹³ It would also set a precedent for any future competitive ETCs that may be designated to target only those exchanges where the profit potential is greatest and the cost to serve is lowest, while ignoring the less lucrative, higher-cost exchanges.¹⁴ The ability of competitors to creamskim through the adoption of narrowly defined service areas does nothing to promote universal service. It only increases the cost of providing service to the remaining customers that only the incumbent has the obligation to serve. This, in turn, places at risk the incumbent's ability and incentive to continue investing in the infrastructure that brings high-quality services to these customers.¹⁵

Ultimately, the fundamental flaw of both ALLTEL's petition and the Wisconsin PSC's ETC designation for ALLTEL is that they rest solely on vague generalities regarding the generic benefits of competition. Both presuppose that the designation of ALLTEL as an ETC and the alignment of the identified rural telephone company service areas with the cellular license area are in the public interest because it will "promote

¹² See, WSTA Comments, p. 3.

¹³ CenturyTel Comments, p. 3.

¹⁴ See, *Ibid.*, p. 6.

¹⁵ See, Stuart Polikoff, *Universal Service in Rural America: A Congressional Mandate at Risk*, OPASTCO, (January 2003), pp. 35-37 (OPASTCO White Paper).

increased competition.”¹⁶ However, Congress did not intend for competition, in and of itself, to be used as the basis for designating additional ETCs in rural telephone company study areas or for facilitating their receipt of high-cost universal service support.¹⁷ As a result, if the Commission deems it necessary to act at this time, then it should reject the Wisconsin PSC’s proposal to fragment the study areas of the fourteen rural telephone companies identified in the petition.

¹⁶ ALLTEL Petition, pp. 3, 6. *See also, Wisconsin Public Service Commission, Application of ALLTEL Communications, Inc., ALLTEL Wireless of Wisconsin RSA #1, LLC and ALLTEL Wireless of Wisconsin RSA #7, LLC for Designation as an Eligible Telecommunications Carrier in Wisconsin*, Docket No. 7131-TI-101, pp. 8-9 (Sept. 30, 2003).

¹⁷ Indeed, WSTA correctly points out that nothing in Section 254 of the 1996 Act calls for the use of universal service support to be used solely to “promote competition.” *See, WSTA Comments*, pp. 7-8.

III. CONCLUSION

For the foregoing reasons, OPASTCO urges the Commission to stay consideration of ALLTEL's petition pending the resolution of the current proceeding that is considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating ETCs. However, if the Commission deems it necessary to address the petition prior to the resolution of this related proceeding, then it should reject the Wisconsin PSC's proposal to fragment the fourteen rural telephone company study areas, since the petition fails to provide a compelling rationale for such an action.

Respectfully submitted,

**THE ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES**

By: /s/ Stuart Polikoff
Stuart Polikoff
Director of Government Relations

By: /s/ Jeffrey W. Smith
Jeffrey W. Smith
Policy Analyst

OPASTCO
21 Dupont Circle NW
Suite 700
Washington, DC 20036
(202)659-5990

January 5, 2004

CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the reply comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 5th day of January, 2004, to those listed on the attached list.

By: /s/ Jeffrey W. Smith
Jeffrey W. Smith

SERVICE LIST

CC Docket No. 96-45
DA 03-3876

Sheryl Todd
Telecommunications Access
Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Room 5-B540
Washington, D.C. 20554
(Three paper copies)

Kathleen Q. Abernathy,
Commissioner and Chair
Joint Board on Universal Service
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington, D.C. 20554

Kevin J. Martin,
Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, D.C. 20554

Jonathan Adelstein,
Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Michael J. Copps,
Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

Bob Rowe,
Commissioner
Montana Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601

Nanette G. Thompson,
Chair
Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, AK 99501-1693

Chairman Michael Powell
Federal Communications Commission
445 12th Street, S.W., Room 8-B201
Washington, D.C. 20554

Lila A. Jaber, Commissioner
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, FL 32399-0850

J. Thomas Dunleavy, Commissioner
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Greg Fogleman,
Economic Analyst
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, FL 32399-0850

Jeff Pursley
Nebraska Public Service Commission
300 The Atrium, 1200 N. Street
P.O. Box 94927
Lincoln, NE 68509-4927

Mary E. Newmeyer,
Federal Affairs Advisor
Alabama Public Service Commission
100 N. Union Street, Suite 800
Montgomery, AL 36104

Larry Stevens,
Utility Specialist
Iowa Utilities Board
350 Maple Street
Des Moines, IA 50319

Joel Shifman,
Senior Advisor
Maine Public Utilities Commission
242 State Street
State House Station 18
Augusta, ME 04333-0018

Carl Johnson,
Telecom Policy Analyst
New York Public Service Commission
3 Empire State Plaza
Albany, NY 12223-1350

Peter Bluhm,
Director of Policy Research
Vermont Public Service Board
Drawer 20
112 State Street, 4th Floor
Montpelier, VT 05620-2701

Lori Kenyon,
Common Carrier Specialist
Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, AK 99501-1693

Charlie Bolle,
Policy Advisor
Nevada Public Utilities Commission
1150 E. Williams Street
Carson City, NV 89701-3105

Jennifer Gilmore,
Principal Telecommunications Analyst
Indiana Utility Regulatory Commission
Indiana Government Center South
302 West Washington Street, Suite E306
Indianapolis, ID 46204

Peter Pescosolido,
Chief, Telecom & Cable Division
State of Connecticut
Dept. of Public Utility Control
10 Franklin Square
New Britain, CT 06051

Michael Lee,
Technical Advisor
Montana Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601

Billy Jack Gregg
Consumer Advocate Division
Public Service Commission of
West Virginia
723 Kanawha Boulevard, East
7th Floor, Union Building
Charleston, West Virginia 25301

Philip McClelland
Assistant Consumer Advocate
Pennsylvania Office of Consumer
Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Barbara Meisenheimer,
Consumer Advocate
Missouri Office of Public Counsel
301 West High Street, Suite 250
Truman Building
P.O. Box 7800
Jefferson City, MO 65102

Earl Poucher,
Legislative Analyst
Office of the Public Counsel
State of Florida
111 West Madison, Room 812
Tallahassee, FL 32399-1400

Brad Ramsay,
General Counsel
NARUC
1101 Vermont Avenue, N.W.
Suite 200
Washington, D.C. 20005

David Dowds,
Public Utilities Supervisor
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, FL 32399-0850

Matthew Brill,
Legal Advisor
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington, D.C. 20554

Daniel Gonzalez,
Senior Legal Advisor
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, D.C. 20554

Lisa Zaina,
Senior Legal Advisor
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Carol Matthey,
Deputy Bureau Chief
Federal Communications Commission
Wireline Competition Bureau
445 12th Street, S.W., Room 5-C451
Washington, D.C. 20554

Katherine Schroder,
Senior Advisor
Federal Communications Commission
Wireline Competition Bureau
445 12th Street, S.W., Room 5-A426
Washington, D.C. 20554

Sharon Webber,
Deputy Division Chief
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A425
Washington, D.C. 20554

Paul Garnett,
Attorney
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A623
Washington, D.C. 20554

Eric Einhorn,
Division Chief
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A426
Washington, D.C. 20554

Bryan Clopton,
Mathematician
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A465
Washington, D.C. 20554

Anita Cheng,
Assistant Division Chief
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A445
Washington, D.C. 20554

Shannon Lipp,
Attorney
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A523
Washington, D.C. 20554

Katie King,
Attorney
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-B544
Washington, D.C. 20554

Geoff Waldau,
Economist
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-B524
Washington, D.C. 20554

Dana Walton-Bradford,
Attorney
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A314
Washington, D.C. 20554

William Scher,
Assistant Division Chief
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-B550
Washington, D.C. 20554

Diane Law Hsu,
Deputy Division Chief
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 6-A360
Washington, D.C. 20554

Cheryl Tritt
Frank Krogh
Jennifer Kostyu
Morrison & Foerster LLP
Counsel to ALLTEL
2000 Pennsylvania Avenue, NW
Suite 5500
Washington, D.C. 20006

Jennifer Schneider
Attorney
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 6-C212
Washington, D.C. 20554

Qualex International
Portals II
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

Glenn Rabin
ALLTEL Corp.
601 Pennsylvania Avenue, NW
Suite 720
Washington, D.C. 20004

John Jones
CenturyTel, Inc.
100 Century Park Drive
Monroe, Louisiana 71203

Karen Brinkmann
Tonya Rutherford
Latham & Watkins
Counsel to CenturyTel
555 Eleventh Street, Suite 1000
Washington, D.C. 20004

Ray Riordan
Riordan Law Office
Counsel to WSTA ILECs
7633 Ganser Way
Suite 202
Madison, WI 53719